

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:MSR:ILD:CHI:TL-N-2743-00

JPJankowski

date: August 9, 2000

to: Chief, Examination Division, Illinois District
Attn: Roger Schneider, Case Manager, E:EG:1212

from: District Counsel, Illinois District

subject: [REDACTED]
Request for Legal Advice and Assistance

The purpose of this memorandum is to respond to your request for assistance in drafting a Form 872 (Consent to Extend the Time to Assess Tax) for your ongoing Illinois District Large Case examination of [REDACTED]. The undersigned is currently assigned to provide you with assistance on this case under the Attorney-Advisor Program. Our assistance is provided in accordance with the Large Case Coordination Procedures, for all significant advice provided in non-docketed large cases.

In response to your original request, the undersigned asked for supplemental documentation and information relating to the reported [REDACTED] statutory merger of [REDACTED]. The underlying [REDACTED] and [REDACTED] merger documentation was requested in order to clarify the merger vehicles utilized to accomplish the subject merger transaction.

In response to our request, Revenue Agent Jim Bails provided the undersigned with: (1) a copy of the "Agreement and Plan of Reorganization by and between [REDACTED] and [REDACTED]" (Merger Agreement), dated [REDACTED]; (2) a [REDACTED] letter dated [REDACTED]; (3) a letter dated [REDACTED] from the [REDACTED] to [REDACTED]; and (4) Articles of Merger filed with the Tennessee Secretary of State.

In providing you with this advisory memorandum, we have chosen not to coordinate this same matter with the National Office of Chief Counsel (Field Service) prior to providing you with our advice. Rather, we will submit this advisory memorandum for post review, in light of the routine nature of the subject

matter. However, please be advised that our advice may be subject to change, in the event the National Office takes exception to our proposed consent language.

The parties "Merger Agreement" clearly contemplated that [REDACTED] would be merged with and into [REDACTED], a direct first tier subsidiary of [REDACTED]. It was the stated intention of the parties (see Merger Agreement para. 1.1) that [REDACTED] would also be the surviving corporation from this statutory merger with [REDACTED]. We understand that the merger transaction was subsequently accomplished as originally planned, at [REDACTED] p.m. Central Standard time on [REDACTED].

We were also able to independently research several Internet databases, that contain comprehensive information on banks and bank holding companies for which the Federal Reserve has supervisory and regulatory responsibility. The Federal Reserve National Information Center (NIC) information and the FDIC Bank Holding Company databases contained historical and regulatory data and information on [REDACTED]. This publicly available information appears to indicate that [REDACTED] has reported to the federal bank regulatory agencies that [REDACTED] was acquired by [REDACTED]. This reported regulatory information agrees with the plan of merger set forth in the Merger Agreement and the Articles of Merger filed with the Secretary of State.

Accordingly, you are herein advised that the following language is appropriate for your use on the proposed Form 872, under the factual disclosures provided to this office:

" [REDACTED] (EIN: [REDACTED]) , successor by merger to [REDACTED] (EIN: [REDACTED]) and as agent for the former [REDACTED] Consolidated Group. *"

At the bottom of page 1 of Form 872, next to a reciprocal to the above-noted asterisk, state:

" * With respect to the consolidated tax liability of [REDACTED] (EIN: [REDACTED]) and Subsidiaries for the tax year ended [REDACTED]. "

Should you have any questions regarding this memorandum, our advice, or any other matters, please contact the undersigned at (312) 886-9225, Extension 319.

RICHARD A. WITKOWSKI
District Counsel

By:



JOHN P. JANKOWSKI
Special Litigation Assistant

CC:

Assistant Chief Counsel (Field Service) CC:DOM:FS
Assistant Regional Counsel (TL), Midstates Region
James C. Lanning, Assistant Regional Counsel (LC), Chicago